

FEDERAL TRADE COMMISSION



FISCAL YEAR 2010
CONGRESSIONAL BUDGET
JUSTIFICATION SUMMARY

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Federal Trade Commission Fiscal Year 2010 Overview Statement

The Federal Trade Commission (FTC) is the only federal agency with jurisdiction to enhance consumer welfare and protect competition in broad sectors of the economy. It enforces the laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through enforcement, advocacy, education, and policy work, the FTC protects consumers and promotes competitive markets in both the United States and around the world.

Highlights of FY 2008 Accomplishments

In fiscal year (FY) 2008, the FTC took action on a wide variety of significant consumer protection and competition matters. The highlighted actions, detailed below, helped ensure that businesses and consumers alike reaped the full benefits of market competition and product innovation.

CONSUMER PROTECTION

Financial Services

Protecting consumers in the financial services marketplace is one of the FTC's highest priorities. The FTC has focused its recent efforts on the following areas:

- **Subprime Credit:** The FTC has acted to protect consumers from deceptive practices occurring in the subprime credit card market. A settlement agreement with CompuCredit Corporation requires the company to reverse fees charged to eligible accounts, thus providing consumers an estimated \$114 million in credits and cash refunds. The FTC's complaint alleged that CompuCredit had violated the FTC Act by deceptively marketing credit cards, primarily through mail

solicitations that misrepresented the amount of credit available to consumers and also failed to disclose important information about the cost of that credit. The FTC closely coordinated its action with related lawsuits filed by the Federal Deposit Insurance Corporation.

- **Mortgage Servicing:** In September 2008, the Bear Stearns Companies, LLC and its subsidiary, EMC Mortgage Corporation, agreed to pay \$28 million to settle FTC charges that they engaged in unlawful practices in servicing consumers' home mortgage loans. The companies allegedly misrepresented the amounts borrowers owed; charged unauthorized fees, such as late fees, property inspection fees, and loan modification fees; and engaged in unlawful and abusive collection practices. In January 2009, the FTC mailed redress checks to 86,000 consumers.
- **Foreclosure Rescue:** In response to a sharp increase in delinquencies and foreclosures in the mortgage market, the FTC has intensified its focus in this area, filing law enforcement actions against defendants allegedly engaged in foreclosure rescue fraud. In FY 2008, the FTC filed law enforcement actions against Safe Harbour Foundation of Florida, Inc.; Mortgage Foreclosure Solutions, Inc.; Foreclosure Solutions, LLC; National Financial Solutions, LLC; and United Home Savers. These companies and their principals were charged with falsely representing that they will stop foreclosure in all or nearly all instances.

The FTC also published a variety of educational materials in English and Spanish, including: "How to Manage Your Mortgage If Your Lender Closes or Files for Bankruptcy," and "The Real Estate Marketplace Glossary: How to Talk the Talk."

- **Debt Negotiation and Settlement:** In October 2007, the FTC filed a complaint against Edge Solutions for failing to provide promised debt settlement services. In January 2008, five marketers of debt reduction programs signed settlements with strong injunctive relief that also imposed a \$1 million judgment, suspended upon payment of \$390,000. In September

2008, four debt-negotiation companies agreed to settle FTC charges that they violated federal law by falsely claiming they could reduce consumers' debt by up to 60 percent, leading many people into financial ruin and bankruptcy. The proposed settlements bar National Support Services LLC, Homeland Financial Services LLC, Financial Liberty Services LLC, and United Debt Recovery LLC from making the challenged claims.

In September 2008, the FTC hosted a workshop to explore growth in the for-profit debt settlement industry and to examine its impact on consumers and businesses. "Consumer Protection and the Debt Settlement Industry" brought together consumer advocates, industry representatives, state and federal regulators, and others with relevant expertise to provide information on a range of issues.

- **Debt Collection:** In November 2007, the FTC obtained \$1.3 million in the LTD Financial Services case, its largest civil penalty ever against a debt collector. Additionally, in October 2007, the FTC hosted a two-day debt-collection workshop that brought together consumer advocates, industry representatives, state and federal regulators, and other experts to discuss a wide range of topics.
- **Credit Repair:** In May 2008, Home Buyers Consulting Network, Inc., a business that offers credit repair and home-buying consulting services, settled FTC charges that it charged an advance fee for credit repair and falsely claimed that it could remove negative information from consumers' credit reports, even if the information is accurate and timely. Also in FY 2008, the FTC charged Payneless Credit Repair, LLC and its owner, and two other credit repair marketers, with violating federal law by collecting advance payment for credit repair services and falsely promising to remove derogatory information from consumers' credit reports, even if the information is accurate and not obsolete.
- **Payday Loans:** In February 2008, the FTC settled charges that three Internet payday lenders violated

the Truth in Lending Act by failing to disclose annual percentage rates (APR) in ads stating the cost of credit. In June 2008, two payday loan lead generators, We Give Loans, Inc. and Aliyah Associates, LLC, d/b/a American Advance, agreed to settle FTC charges that their Internet advertising stated payday loan costs and repayment periods without disclosing APR information.

- **FACT Act:** The FTC, together with other federal financial regulatory agencies, issued the final Affiliate Marketing Notice Rule and the final Identity Theft Red Flags and Discrepancy Rules. In May 2008, the FTC and the Federal Reserve Board announced proposed regulations that generally would require a creditor to provide a consumer with a risk-based pricing notice.

Privacy and Data Security

- **Data Security and Identity Theft:** In November 2007, the FTC released the second national survey of the incidence and impact of identity theft. The survey found that ID theft continues to exact a heavy toll on consumers and the marketplace.

In December 2007, the FTC announced its first action alleging violations of the FTC Disposal Rule. American United Mortgage Company paid \$50,000 in civil penalties after it left sensitive consumer loan documents in and around an unsecured dumpster and otherwise failed to protect customer information. Other recent data security enforcement actions include Life is good, Goal Financial, and ValueClick. Also in March 2008, discount retailer TJX and data brokers Reed Elsevier and Seisint settled charges that they failed to provide reasonable and appropriate security for sensitive consumer information.

The FTC continues to educate consumers on how to avoid becoming victims of ID theft. In FY 2008, consumers accessed 11.4 million Web and print consumer protection messages, including more than

25,000 education kits, related to ID theft. In February 2008, the President's Identity Theft Task Force and the U.S. Postal Service sent the FTC's ID theft brochure to every household in the U.S., numbering 121 million pieces. Additionally, the FTC premiered "Protecting Personal Information: A Guide for Business - An Interactive Tutorial," an innovative online tutorial that guides businesses on practical ways to keep sensitive data secure.

- **Pretexting:** In December 2007, in the case of CEO Group, Inc., the FTC obtained an order resolving charges that defendants obtained and sold telephone records without consumers' knowledge or consent. In January 2008, a federal judge granted summary judgment for the FTC in the Accusearch case and required the defendants to give up nearly \$200,000 in ill-gotten gains.
- **Behavioral Advertising:** In November 2007, the FTC hosted a Town Hall meeting on behavioral advertising. Interested parties discussed recent changes in the online advertising marketplace, how data is collected and used for behavioral advertising, the effectiveness of consumer disclosures in this area, and what standards currently, or should, govern behavioral advertising. In December 2007, the FTC issued for public comment proposed self-regulatory principles for behavioral advertising.

Do Not Call and Telemarketing

- **Do Not Call:** The FTC continues to vigorously enforce the Telemarketing Sales Rule, including the Do Not Call (DNC) provisions. The National DNC Registry has been a continued success and, at the end of FY 2008, more than 172 million telephone numbers were on the Registry. Additionally, telephone numbers placed on the Registry now will remain on it permanently.

Though most covered entities comply with the DNC Rule, the FTC received more than 1.75 million

consumer complaints alleging DNC violations in FY 2008. In November 2007, the FTC announced a major crackdown on DNC violators, involving six settlements against telemarketers, including ADT and Craftmatic, resulting in nearly \$7.7 million in civil penalties. In July 2008, the FTC charged two companies telemarketing Dish Network programming with DNC violations and illegally abandoning calls. The companies, Planet Earth Satellite, Inc. and Star Satellite, LLC, agreed to pay \$95,000 for violating the FTC's Telemarketing Sales Rule.

- **Other Telemarketing:** In May 2008, the FTC, in cooperation with more than 30 international, federal, state, and local law enforcement agencies, announced the agency's largest telemarketing fraud sweep. Through "Operation Tele-PHONEY," the FTC filed federal district court complaints against 13 telemarketing operations in which unscrupulous telemarketers defrauded more than 500,000 consumers, resulting in losses of more than \$100 million. In many of the FTC actions, federal courts temporarily froze defendants' assets and suspended their operations. Operation Tele-PHONEY included more than 80 state law enforcement actions, criminal actions against more than 90 defendants, and eight cross-border telemarketing fraud actions brought by Canada's Competition Bureau and the British Columbia Business Practices and Consumer Protection Authority. In September 2008, in the first settlement resulting from cases brought in the sweep, advance-fee credit card telemarketers agreed to pay nearly \$1 million to provide redress to consumers defrauded by their deceptive conduct.

In May 2008, the FTC unveiled the "Who's Calling?" consumer education campaign, which encourages consumers to recognize the signs of telemarketing fraud, report fraud to the FTC and state attorneys general, and register phone numbers on the National DNC Registry if they want to receive fewer telemarketing calls. The campaign features a new Web site, in both English and Spanish, and two short videos.

In August 2008, the FTC announced two amendments to the Telemarketing Sales Rule (TSR). One will expressly bar, with certain narrow exceptions, telemarketing calls that deliver prerecorded messages, unless a consumer has agreed to accept such calls from the seller. The other related technical amendment modifies the TSR's method of calculating the maximum permissible level of "call abandonment."

"Green" Marketing

In FY 2008, the FTC hosted three workshops on "green" marketing -- marketing regarding the environmental practices of a company or the environmental benefits of a product or service. These workshops brought together industry members, consumer advocates, environmental groups, and academics to focus on particular "green" marketing issues. Specifically, the FTC hosted the Carbon Offsets and Renewable Energy Certificates Workshop, the Green Packaging Claims Workshop, and the Green Building and Textiles Workshop.

Technology

In March 2008, the FTC issued a report highlighting consumer protection challenges in the face of emerging and evolving technologies in the next ten years. The report summarizes the proceedings of the FTC's three-day public hearings, "Protecting Consumers in the Next Tech-ade."

In May 2008, the FTC hosted a two-day town hall meeting to explore the evolving mobile commerce marketplace and its implications for consumer protection policy. Participants discussed topics such as the use of text messaging and related messaging services as instruments of commerce; the adaptation of advertising to mobile devices; mobile commerce practices targeting children and teens; industry best practices in preventing fraud, disclosing costs, and resolving billing disputes; evolving security threats and solutions; and next generation products and services.

In July 2008, the FTC and the Technology Law and Public Policy Clinic at the University of Washington School of Law co-hosted a day-long town hall meeting to examine emerging uses of contactless payment devices and their implications, including security and privacy implications, for consumer protection policy. In September 2008, the FTC hosted a Transatlantic RFID Workshop on Consumer Privacy and

Data Security to explore emerging applications of radio frequency identification technology and their implications for consumer protection policy.

In FY 2008, the FTC continued its enforcement against spyware and adware programs. In January 2008, the FTC initiated a civil contempt action against Walter Rines, his company Odysseus Marketing, and Sanford Wallace for violating a 2005 federal court order by obtaining personal information from users of the social networking Web site MySpace through "phishing," "pagejacking," or "mousetrapping."

Using its unfairness authority, the FTC obtained a stipulated permanent injunction against the operator of AdultFriendFinder.com. The FTC alleged that, to lure consumers to its sites, AdultFriendFinder delivered pop-up ads containing graphic, sexually explicit images. These images often were foisted on consumers, including minors, who were not visiting sexually-oriented Web sites, but rather were generally surfing the Web.

The FTC continued to aggressively enforce the CAN-SPAM Act. In FY 2008, the FTC settled the Adteractive, Member Source Media, and ValueClick cases, obtaining nearly \$4 million in civil penalties against three on-line advertisers offering "free" gifts that were not free. The \$2.9 million civil penalty in ValueClick is the FTC's highest CAN-SPAM penalty on record, three times greater than the previous record amount. In January 2008, the FTC obtained an over \$2.5 million judgment against Sili Neutraceuticals, LLC for making misrepresentations about dietary supplements and for various CAN-SPAM violations. In March 2008, the FTC announced that Cyberheat, Inc., an X-rated Web operation that paid affiliates who used illegal e-mail to drive customers to its Web sites, will pay a \$413,000 civil penalty under a settlement reached with the FTC and Department of Justice (DOJ). In the FTC's first action under the U.S. SAFE WEB Act of 2006, the FTC reached a settlement with Spear Systems, Inc. and other defendants, located throughout the United States, Canada, and Australia, that used spam e-mail to sell weight loss supplements.

The FTC worked to educate consumers about phishing by releasing three 60-second videos featuring a "fishy" visitor

Spyware and Adware

Graphic Pop-Up Advertisements

Spam and Phishing

whose fin-fitted business suit clues customers into the fact that they are being scammed. The FTC also held a round-table with communications and technology experts on how to better educate customers about phishing. In July 2008, the FTC released a staff report on the roundtable summarizing key themes that emerged from the discussion and outlining next steps for increasing anti-phishing education.

Internet Fraud and Security

OnGuardOnline.gov continues to grow. Articles on malware, broadband services, and securing laptops, as well as interactive quizzes and updated versions of popular articles for parents and teens on social networking, were added in FY 2008. At the end of the fiscal year, OnGuardOnline.gov had attracted more than 7 million unique visits since its inception.

Health Fraud

The FTC continues to combat the deceptive marketing of health products, particularly products making disease prevention or weight loss claims. In FY 2008, the FTC obtained summary judgment opinions in National Urological Group, Direct Marketing Concepts, and New England Diet Center. The FTC also announced settlements with seven marketers of natural progesterone creams that made false disease claims. In December 2007, the FTC settled charges in the J.W. McLain case that the defendants made deceptive claims that their herbal tea could prevent, treat, or cure AIDS, diabetes, cancer, arthritis, strokes, and heart disease. In May 2008, NetClick Media, an operation that offered "free trials" of its herbal products, including smoking cessation patches, halted its deceptive practices, pending trial. In September 2008, the FTC announced 11 law enforcement actions challenging deceptive advertising of bogus cancer cures. The agency charged the companies with making unsupported claims that their products cured or treated one or more types of cancer. As part of a broader investigation into dietary supplements purported to prevent or treat colds or flu, the FTC settled charges that Airborne Health, Inc. disseminated false and unsubstantiated claims that Airborne Effervescent Health Supplement prevents or treats colds, protects against exposure to germs in crowded environments, and is a clinically proven cold remedy.

In September 2008, in conjunction with its law enforcement sweep, the FTC announced a new Web site about bogus cancer cures. The site tells consumers how to spot and report

bogus claims they see online, and urges people with cancer to talk to their treatment team about any products they'd like to try. The site features a video and includes a list of resources on cancer treatments from a variety of agencies within the federal government. Information is provided in English and Spanish.

The FTC has continued to aggressively combat consumer fraud against Hispanics. In October 2007, the FTC issued a report that revealed that two-thirds of the Spanish-language work-at-home advertisements reviewed showed signs of fraud. Also in FY 2008, the FTC held two presentations for staff at the standards and compliance departments of Univision and Telemundo focusing on advertising law and spotting ads with questionable claims targeted at Hispanic consumers.

In June 2008, two defendants settled FTC charges that they scammed Spanish-speaking consumers by posing as debt collectors seeking money the consumers did not owe. In August 2008, the FTC charged International Marketing, the marketer of a work-at-home business opportunity, with violating federal law by falsely promising Spanish-speaking consumers substantial income for stuffing envelopes.

In December 2007, a federal court entered a default judgment of more than \$34 million against Nationwide, a company that billed unauthorized collect call charges to millions of consumers. In March 2008, the owner of the companies was banned from all billing on local telephone bills. The FTC also sued the billing aggregators that billed and responded to complaints on behalf of Nationwide. In March 2008, the FTC obtained a settlement with the largest billing aggregator, BSG Clearing Solutions North America, LLC, and two of its subsidiaries. The settlement requires the defendants to pay \$1.9 million in redress and provides comprehensive injunctive relief regarding the due diligence they must undertake before providing billing services for a new vendor. In March 2008, a U.S. district court ordered a halt to the illegal operations of Steven L. Kennedy, who crammed unauthorized charges for Web site services onto the phone bills of hundred of thousands of small businesses and non-profit organizations. Following a trial, a U.S. district court judge ordered the defendant to surrender more than \$4.1 million in ill gotten gains.

Hispanic Initiative

Cramming

Payment Processors

In December 2007, the FTC, joined by seven state attorneys general, filed a complaint against payment processor Your Money Access for attempting to debit more than \$200 million from consumers' bank accounts on behalf of telemarketers and Internet-based merchants.

Business Opportunities and Work-at-Home Schemes

The FTC continues to spearhead a federal-state partnership to combat business opportunity and work-at-home frauds, and to educate the public to detect and avoid these scams. The FTC also continues to litigate many cases in this area. For example, in October 2007, the FTC announced a settlement resolving allegations that Business Card Experts deceptively marketed business card dealerships, using false earnings claims and phony references. In April 2008, Lifestyle Vending, Inc. settled FTC charges that they misled consumers into paying thousands of dollars for a vending machine business venture without substantiating their earnings claims. In July 2008, in the matter of Davison Design and Development, Inc., the owners of an invention promotion operation agreed to pay \$10 million in consumer redress to settle FTC charges that they deceived consumers who paid up to \$12,000 for misrepresented invention promotion services.

Payment Processors

In March 2008, the FTC asked a U.S. district court judge to order a halt to the alleged illegal practices of Clifton Telecard Alliance (CTA), a major distributor of prepaid calling cards. The FTC charges that CTA misrepresents the number of calling minutes consumers get, fails to disclose that consumers' cards will be charged whether or not the calls go through, and charges hidden fees. The companies targeted their advertising at recent immigrants, who depend on the cards to stay in touch with friends and family in other countries. In May 2008, the FTC brought charges against Alternatel, Inc., Voice Prepaid, Inc., G.F.G. Enterprises, LLC, also d/b/a Mystic Prepaid, Voice Distributors, Inc., Telecom Express, Inc., and their principals, Nickolas Gulakos, Moses Greenfield, Lucas Friedlander, and Frank Wendorff.

Children's Issues

- **Media Violence:** In May 2008, the FTC released the results of its latest nationwide undercover shop of movie theaters and movie, music, and video game retailers. The survey reported about the extent to which retailers prevent unaccompanied minor children from buying tickets to R-rated movies, R-rated DVDs, unrated DVDs or movies that were R-rated in theaters, M-rated video games, and music CDs labeled with a Parental Advisory Label for explicit content.
- **Teen Drinking:** In June 2008, the FTC issued a new report on alcohol marketing and youth, examining industry efforts to reduce the likelihood that alcohol advertising will target those under the legal drinking age of 21. It also announced a new system for monitoring alcohol industry compliance with self-regulatory programs.
- **Food Marketing:** In July 2008, The FTC issued a report, "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation" that announced the results of a study on food marketing to children and adolescents. The report finds that food, beverage, and other companies have responded to the problem of childhood obesity in a number of ways, including working to implement the agency's recommendations from a 2005 FTC workshop and 2006 report on marketing, self-regulation, and childhood obesity. Their efforts have yielded significant developments, including establishment of the Children's Food and Beverage Advertising Initiative; development of new and reformulated foods and beverages with improved nutritional profiles; increased offerings of snacks and other foods in smaller portions and single-serving packages; various labeling initiatives designed to help consumers identify "better for you" foods or to better convey nutrition information to consumers; support for public education initiatives to promote nutrition and healthy lifestyles; and the launch of the Alliance for a

Healthier Generation's Guidelines Marketing Food to Children and Adolescents for competitive foods and beverages sold in schools, outside the school meal program.

Order Enforcement

- **Project Scofflaw:** The FTC continues to monitor compliance with administrative and federal court orders entered in its consumer protection cases. In November 2007, a district court affirmed its earlier civil contempt finding against Kevin Trudeau. The Court found that Trudeau misrepresented the content of his book, "The Weight Loss Cure 'They' Don't Want You to Know About", by claiming in infomercials that the weight loss protocol in the book was "easy" and ultimately enabled consumers to eat "everything" without gaining weight. In fact, the protocol contains hundreds of strict mandates, as well as life-long dietary restrictions. The Court entered a \$37.6 million judgment against Trudeau to compensate consumers harmed by his infomercials and banned him for three years from disseminating infomercials for books in which he has an interest.

In June 2008, Dennis J. Saccarato and his businesses, Sparta Chem, Inc. and Compu-Kleen, Inc., agreed to a settlement with the FTC in which, among other things, they admit that they are in contempt for violating a court order barring them from making fraudulent representations to induce sales of cleaning supplies and shipping and billing for supplies that businesses didn't order.

- **Aiding Criminal Enforcement:** The FTC's Criminal Liaison Unit (CLU) continues to work with criminal authorities to encourage prosecutions of criminal consumer fraud and to assist in those prosecutions. In FY 2008, federal and state criminal authorities charged 51 FTC defendants and their associates with crimes arising from acts investigated or prosecuted by

the FTC. During this period, 43 such defendants and their associates were convicted or pled guilty and 56 defendants were sentenced.

In January 2008, after a one week trial, a North Carolina jury returned a guilty verdict on all 23 charged counts of federal indictment against Giuseppe Pileggi, the ringleader in a \$15 million Costa Rican sweepstakes scam that convinced elderly Americans to pay purported taxes and insurance on non-existent lottery winnings. The jury also found Pileggi liable for \$8.3 million in victim losses. Pileggi now faces a sentence of 50 years. An attorney from the FTC's Division of Enforcement served as a Special Assistant U.S. Attorney on the case. Forty-five defendants have been indicted; thus far, 27 have pled guilty, and three have been sentenced, with two receiving 10-year sentences and one receiving a 23-month sentence. There currently are eight fugitives and three defendants awaiting extradition from Costa Rica and Argentina.

In April 2008, a federal jury returned a guilty verdict on all 14 counts of indictment against Kyle Kimoto, the ringleader of Assail, Inc., a massive, international, advance-fee credit card scam. In September 2008, Kimoto was sentenced to twenty-nine years in jail based on the high amount of injury, the number of victims, his role as a ringleader, and his history of recidivism. The CLU coordinated with an Assistant U.S. Attorney in the Southern District of Illinois in the prosecution.

Consumer Response Systems and Services

- **Consumer Response Center:** In FY 2008, the CRC handled more than 36,000 inquiries and complaints from consumers and businesses each week.
- **Consumer Sentinel Network:** At the end of FY 2007, more than 7.87 million fraud, identity theft, and DNC complaints were accessible to law enforcement via Consumer Sentinel (now the Consumer Sentinel

FY 2008 Activity Summary

Network). Financial complaints, included in the Consumer Information System database in FY 2007, became accessible to law enforcement via Consumer Sentinel Network (CSN) in FY 2008. At the end of FY 2008, CSN contained more than 12.2 million complaints, and is now accessible to more than 1,700 law enforcement agencies worldwide. In June 2008, the FTC launched a new and vastly improved CSN that allows law enforcement users to search all consumer complaints faster and more easily, store search results, search within searches, and connect with other law enforcers.

MAINTAINING COMPETITION

The FTC actively enforces the antitrust laws in a range of industries of critical importance to American consumers, including healthcare, energy, real estate, technology, and retail. FY 2008 was yet another very active year in the agency's mission to maintain competition, with the agency pursuing 27 new competition law enforcement actions and undertaking several important workshops, reports, and advocacy letters to promote competition and educate its stakeholders of the importance of competition to consumers.

The FTC pursued 21 merger enforcement challenges, resulting in thirteen consent agreements, six transactions abandoned or restructured after the second request was issued or after staff raised antitrust concerns with the parties, and two filed complaints (one filed administratively, the other in federal court). The FY 2008 merger matters include actions in several markets, including pharmaceuticals (*Sun Pharmaceutical Industries/Taro Pharmaceutical Industries, Fresenius SE/Daiichi Sankyo Company, and Schering-Plough Corp/AkzoNobel*); medical devices (*Kyphon Inc./Disc-O-Technical Technologies Ltd.*); hospitals (*Inova/Prince William*); retail distribution (*Great Atlantic & Pacific Tea Company/Pathmark Stores, Inc. and Agrium Inc./UAP Holding Corporation*); professional services (*Talx Corporation and Reed Elsevier PLC/ChoicePoint Inc.*); industrial products and chemicals (*Compagnie de Saint-Gobain/Owens Corning, Flow International Corporation/Omax Corp and Carlyle Partners IV, L.P./JP Morgan Chase & Co*); and consumer goods (*McCormick & Company/Unilever Group and Pernod Ricard/V&S Spirits*).

In addition to reviewing proposed acquisitions noticed under the Hart Scott Rodino premerger notification program and challenging transactions where the Commission has reason to believe that the transaction will violate the antitrust laws, the FTC administers the premerger notification program (for both the FTC and the DOJ's Antitrust Division). The agency conducted an initial review of hundreds of mergers and granted Early Termination of the HSR waiting period where there was no reason to believe that competition would be harmed. In FY 2008, the FTC reviewed 1,656 transactions noticed under HSR. The data on second requests issued and enforcement actions taken during FY 2008 show that the agency has continued to vigorously review merger filings and to challenge those transactions that are likely to harm competition. In its nonmerger agenda, the FTC initiated four major nonmerger enforcement actions in FY 2008, while resolving a number of ongoing matters and pursuing matters brought in FY 2007. The four new nonmerger enforcement cases, which included one filed complaint and three consent orders, covered a broad range of industries. The FTC challenged agreements among competitors to fix prices or otherwise limit competition in real estate and health care services, the actions of a pharmaceutical company to maintain its monopoly power, and the unfair methods of competition and unfair acts or practices of a patent holder in its enforcement of certain patents against makers of equipment employing Ethernet, a computer networking standard.

The health care and pharmaceutical industries were again a priority area for competition enforcement as prices continue to escalate in this industry, which is critically important to consumer welfare. The FTC continued to advance its enforcement program to attack collusive "pay-for-delay" settlements in the pharmaceutical industry, where the brand name drug company pays the generic drug company to delay its entry into the market. These deals cost billions of dollars to consumers and the government, which pays almost one-third of the nation's prescription drug costs. In February of 2008, the FTC filed a complaint in federal district court alleging that Cephalon's conduct, in signing patent-litigation settlement agreements that included payments designed to prevent generic competition, constituted an abuse of monopoly power that is unlawful under Section

Health Care and Pharmaceuticals

5 of the FTC Act. In November 2007, the FTC settled another pharmaceutical litigation it had initiated in FY 2006. The FTC had originally charged that Barr Laboratories and Warner Chilcott had entered into an agreement that eliminated generic competition for Warner Chilcott's oral contraceptive, Ovcon. As a result of the FTC's litigation and settlements, the defendants have eliminated the restrictions on generic entry, and consumers now have access to a lower-cost generic Ovcon years earlier than would have occurred absent the litigation.

The Commission is also active in maintaining competition among health care providers. In March of 2008, the FTC settled charges with two Connecticut chiropractic associations and ordered the health care providers to stop collectively refusing to deal with a cost-saving Connecticut health plan.

In April of 2008, the Commission issued its final opinion and order to restore the competition that was lost when Evanston Northwestern Healthcare Corporation (ENH) in suburban Chicago, Illinois, acquired its competitor, Highland Park Hospital. The order sets out the specific requirements for the remedy the Commission ordered in its August 2007 liability decision, finding that ENH's acquisition of Highland Park Hospital was anticompetitive and violated federal antitrust law. The Commission Order requires ENH to establish separate negotiating teams for both inpatient and outpatient services at Evanston and Highland Park, use separate negotiations as its status quo approach to negotiations with payors (unless a payor specifically elects to opt out and negotiate for all ENH hospitals jointly), and prohibits the Evanston and Highland Park negotiating teams from engaging in the negotiations when a payor elects to negotiate jointly for all ENH hospitals. The purpose of the requirements is to re-inject competition between the ENH and Highland Park for the business of payors.

In May 2008, the U.S. Court of Appeals for the Fifth Circuit upheld a Commission opinion that North Texas Specialty Physicians (NTSP), a group of independent competing physicians based in Fort Worth, had restrained competition among its member physicians in violation of Section 5 of the FTC Act by, among other things, orchestrating a price agreement among its physicians, negotiating price terms in

payor contracts on behalf of its physicians, and refusing to deal with payors (including insurance companies and health plans) except on collectively agreed-upon terms. In its 2005 decision, the Commission ruled that NTSP's challenged practices constituted horizontal price fixing not plausibly related to any procompetitive efficiencies. The Court agreed with the Commission that, based on the record evidence, NTSP's conduct could be condemned under an abbreviated rule of reason analysis because the anticompetitive effects of NTSP's practices were "obvious." The Court remanded to the Commission for modification of one provision of the Commission's remedial order, which the Commission modified in a Final Order issued in September 2008.

During FY 2008, the FTC sought a preliminary injunction and a temporary restraining order to block Inova Health System Foundation's proposed acquisition of Prince William Health System, pending a full administrative trial on the merits. The FTC's complaint alleged that the acquisition would have violated federal antitrust laws by lessening competition for general acute care inpatient hospital services in the Northern Virginia market, leading to higher prices for consumers, and reduced incentives for non-price based competition. The merger would have resulted in Inova controlling 73 percent of the licensed hospital beds in Northern Virginia, and six of the ten hospitals in the region, and would have eliminated the direct competition between parties which allows health care plans to negotiate for lower prices. On June 6, 2008, the parties publicly announced their mutual decision to terminate the proposed acquisition agreement during the preliminary injunction and temporary restraining order proceeding, and the FTC subsequently dismissed its administrative complaint on June 17, 2008.

The FTC also filed an amicus brief in the matter of *Ciprofloxacin Hydrochloride Antitrust Litig., sub nom. Arkansas Carpenters Health and Welfare Fund v. Bayer AG* urging the U.S. Court of Appeals for the Federal Circuit to reverse the District Court's decision and hold that patent laws do not immunize patent settlements between pharmaceutical firms from antitrust scrutiny. The FTC filed the brief based on "the importance of the issues presented to its mandated mission and the serious risk to consumer welfare posed by anticompetitive settlement agreements" between drug companies.

The FTC held two public workshops on health care issues in 2008. “Clinical Integration in Health Care: A Check-Up” was held in May to discuss “clinical integration,” a term used to describe certain types of collaboration among otherwise independent health care providers to improve quality and contain costs. The workshop served to support the FTC’s ongoing effort to study developments in health care related clinical and financial integration that can inform its anti-trust analysis, to ensure that consumers are protected from anticompetitive conduct, while not discouraging legitimate efficiency-enhancing joint ventures.

A second workshop titled “Innovations in Health Care Delivery” was held in April. This one-day public workshop examined the competition and consumer issues raised by recent health care delivery trends. In particular, workshop participants focused on limited service clinics (LSCs), also called retail health facilities or retail clinics; price and quality transparency; and health information technology.

In February, April, and September of 2008, FTC staff submitted three separate comments relating to existing or proposed certificate of need (CON) laws being considered in the states of Alaska, Florida, and Illinois, respectively. In February 2008, the FTC submitted written testimony to a committee in the Alaska House of Representatives on legislation that would modify or repeal certain aspects of Alaska’s CON law, which applies to health care facilities in that state. The Commission observed that, although CON laws were intended to help contain health care spending, the best available research does not support the conclusion that CON laws actually reduce such expenditures. Rather, CON laws tend to create barriers to entry for health care service providers who may contribute to qualitative competition and provide consumers with important choices in the market. Moreover, CON laws may be subject to abuse by incumbent providers, who can seek to exploit a state’s CON process to forestall the entry of competitors in their markets. In April 2008, FTC staff submitted written testimony to Florida on a bill that would eliminate certificate of need (CON) requirements for several categories of health providers. The testimony supported the bill’s effort to reduce the scope of the Florida CON regime and noted such laws can be a barrier to entry. Governor Charlie Crist signed the bill into law in May 2008.

In September, an FTC-DOJ joint statement before the Illinois Task Force on Health Planning Reform stated the agencies' position regarding CON laws, saying they undercut consumer choice, stifle innovation, and weaken markets' ability to contain health care costs.

Energy is another important industry in which the Commission devotes significant resources. In FY 2008, the Commission continued its challenge to the proposed acquisition of the Peoples Natural Gas Company, a subsidiary of Dominion Resources, by Equitable Resources. In June 2007, the U.S. Court of Appeals for the Third Circuit had granted the FTC an injunction of the merger pending appeal. Subsequently, during FY 2008, oral arguments in the appeal were held before the Court of Appeals. After these arguments, in January 2008, Equitable abandoned this acquisition, and on March 3, 2008, the Court of Appeals vacated the district court opinion that had originally denied the FTC's motion for a preliminary injunction on grounds that the state action doctrine bars the FTC from stopping a merger that the Pennsylvania Utility Commission had approved.

Energy

Exercising the authority provided by Congress under the Energy Independence and Security Act of 2007 (EISA), in FY 2008, the Commission initiated a rulemaking process that will assist the Commission in determining whether, and in what ways, it should develop a rule defining and prohibiting market manipulation in the petroleum industry. In May 2008, the Commission issued an Advance Notice of Proposed Rulemaking, and requested public comments on a range of issues and questions pertinent to the rulemaking process. The Commission elicited the views of a wide spectrum of consumer groups, businesses, academic experts, and other informed sources on the issues raised in this proceeding. Following analysis of those comments and additional analysis, in August 2008, the Commission issued a Notice of Proposed Rulemaking setting forth the text of a proposed rule on petroleum market manipulation and inviting further public comment.

In November 2007, the FTC issued its third annual Federal Trade Commission Report on Ethanol Market Concentration on the state of ethanol production in the United States. The report noted that, as of September 2007, 13 firms had entered into the production of ethanol during the preceding year,

bringing the total number of U.S. producers to 103. As new firms have entered, the market (which is unconcentrated by any measure of capacity or production) has become even less concentrated. The FTC concluded that current levels of market concentration would not support a presumption that a single firm, or a small group of firms, could wield sufficient market power to set or coordinate price or output levels.

In April of 2007, the Commission submitted a comment to the Federal Energy Regulatory Commission (“FERC”) concerning FERC’s proposals aimed at strengthening competition in organized electric power markets to increase economic efficiency, improve electric system reliability, and enhance consumer welfare. In particular, the FTC’s comment encouraged FERC to facilitate improvements in pricing and direct load control, collectively known as “demand response.” According to the comment, “a focus on removal of regulatory obstacles to efficient real-time price signals and demand response at the federal and state levels can be an important step toward appropriate, efficient reliance on conventional price mechanisms to handle scarcity and guide investment.” The comment also noted that there appeared to be merit to FERC’s proposals about providing information to reduce search costs for retail energy sellers that seek long-term supply contracts with generators and ensuring the independence of market monitors. The comment suggested that FERC expand the opportunities for marketers to get data and analysis from market monitors for law enforcement investigations, and that FERC consider expanding its proposal to allow incentive-based approaches to ensure that Regional Transmission Organizations and Independent System Operators are responsive to consumers.

In response to a June 2008 Congressional directive, the FTC submitted a report on Activities in the Oil and Natural Gas Industries to the Senate and House Committees on Appropriations concerning FTC activities “relating to ongoing reviews of mergers, acquisitions and other transactions in the oil and natural gas industries, the investigation of pricing behavior or any potential anticompetitive actions in those industries, and the resources that the Commission has devoted to such reviews and investigations.” Each of these reports, which Congress directed the FTC to issue semian-

nually, describes the FTC's law enforcement efforts relating to the oil and natural gas industries, including investigations of and challenges to mergers and acquisitions and potentially anticompetitive conduct in those industries, as well as the FTC's rulemaking proceeding involving market manipulation in the petroleum sector, its work to assist consumers following Hurricane Ike, the Gasoline and Diesel Price Monitoring Project, the agency's annual Report on Ethanol Market Concentration, and other activities.

In another industry of importance to consumers, the Commission continues to challenge realtor board rules that restrain competition and hinder consumer choice in markets throughout the country. Following on its successful law enforcement sweep of the real estate industry in FY 2007, the agency issued a consent order barring a group of real estate professionals, based in Milwaukee, Wisconsin, from adopting or enforcing rules that withhold valuable benefits of the multiple listing service it controls from consumers who chose to enter into nontraditional listing contracts with real estate brokers.

In April, 2008 the Commission also heard oral arguments in the staff's appeal of a December 2007 decision by an FTC administrative law judge dismissing an administrative complaint charging Realcomp with violating Section 5 of the FTC Act by prohibiting information on Exclusive Agency listings and other forms of nontraditional listings from being transmitted from the multiple listing service (MLS) it maintains to public real estate web sites. The complaint further alleged that the conduct was collusive and exclusionary, because the brokers enacting the rules were essentially agreeing among themselves how to compete with one another, and were withholding the valuable benefits of the MLS from nontraditional real estate brokers. In dismissing the complaint, the ALJ ruled that Commission staff had not met its burden of demonstrating that the group's policies unreasonably restrained or substantially lessen competition under a standard rule of reason analysis. The ALJ found that "despite Realcomp's market power and the implementation of the Website Policy, discount brokerage services continue to be widely available." Commission staff is awaiting a Commission Opinion on the appeal.

Real Estate

Technology and Manufacturing

The FTC charged Negotiated Data Solutions LLC (N-Data) with renegeing on its commitment to charge a one-time royalty of \$1,000 to manufacturers or sellers of products using the IEEE standard, and demanding instead higher royalties from users. A consent order resolving the charges requires N-data to stop enforcing the patents at issue unless N-data has first offered a license under the original terms. The Commission brought this case under its Section 5 “unfair methods of competition” authority, which is broader than the other antitrust laws, as well as its unfair acts or practices authority.¹

In September of 2008, the FTC issued an administrative complaint challenging Polypore’s consummated acquisition of Microporous Products in the global market for battery separators, a key component in flooded lead-acid batteries. According to the FTC’s complaint, the acquisition, which occurred in February 2008, substantially lessened competition and led to higher prices in several North American product markets including deep-cycle separators used in golf carts, motive separators for batteries used primarily in forklifts, automotive separators used in car batteries, and uninterruptible power supply (UPS) separators used in batteries that provide backup power during power outages. Additionally, the complaint alleged that Polypore engaged in anticompetitive conduct by entering into a joint marketing agreement with a competitor, restricting the competitor’s entry into the polyethylene battery separator markets. The complaint also charged that Polypore sought to maintain monopoly power through anticompetitive means in several battery separator markets. This proceeding is now before the Commission’s ALJ.

Several matters are ongoing. On January 25, 2008, the U.S. Court of Appeals for the Fifth Circuit upheld the Commission’s decision and order finding that Chicago Bridge & Iron’s acquisition of Pitt-Des Moines, Inc.’s assets was anticompetitive and in violation of the U.S. antitrust laws. Specifically, the Commission found that the consummated merger significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty and industrial stor-

¹ Commissioner William E. Kovacic dissented from the issuance of the complaint and order in this matter.

age tanks in the United States: liquefied natural gas storage tanks, liquefied petroleum gas storage tanks, liquid atmospheric gas storage tanks, and thermal vacuum chambers.

In FY 2008, the Commission continued its challenge of Whole Foods' \$670 million acquisition of its chief rival, Wild Oats Markets, Inc., in the market for premium natural and organic supermarkets. In July 2008, the Court of Appeals for the District of Columbia Circuit reversed the district court's denial of a preliminary injunction and remanded the case to the district court.

Building on merger process improvements adopted in FY 2006, the agency continued its efforts to reduce the volume of materials that parties must submit to respond to a second request. Consistent application of these measures to the second request process has allowed staff and the parties to focus more quickly and effectively on relevant documents and data. The FTC has continued to improve its internal processes to reduce delay and to implement solutions for electronic production issues, including increased resources for litigation support.

Challenging mergers under the antitrust laws is a complex process and parties are presenting more technically complex facts and sophisticated economics analysis to defend their mergers. In February 2008, the FTC convened a public workshop on "unilateral effects" that brought together recognized legal and economic experts to discuss how unilateral effects theories are applied to mergers of firms selling competing but differentiated products as well as judicial perspectives on such theories. While unilateral effects is a widely accepted theory of competitive harm, both the FTC and DOJ have experienced some challenges litigating these merger cases.

In an increased effort to disseminate the message of why competition matters to a broad audience of consumers and businesses, the FTC released a brochure titled "Competition Counts: How Consumers Win When Businesses Compete." This publication aims to educate the general public on the important role of competition in providing them the most valuable mix of price, choice, and innovation. This year, the FTC also released the "FTC Guide to the Antitrust Laws", a web-based resource for anyone with general questions about

Retail

Merger Review Process Reforms and Workshop

Competition Outreach, Reports, and Advocacy

the antitrust laws. This guide contains links to statutes, competition enforcement actions, and other guidance materials available from the FTC. The FTC also published an updated version of the “Bureau of Competition User’s Guide”, which introduces the staff of the FTC’s Bureau of Competition and provides a description of each Division within the Bureau, and provides contact information for Bureau staff.

In January 2008, the FTC and DOJ filed joint comments with the Supreme Court of Hawaii opposing a proposal to expand the scope of activities that must be performed by a lawyer. FTC staff communicated its long-standing position that non-lawyers should be permitted to compete with lawyers in areas where no specialized legal knowledge and training is necessary to protect the interests of consumers. Also, in April 2008, the FTC and DOJ filed joint comments with the South Carolina Supreme Court advocating that certain proposed guidelines for residential and commercial real estate closings should be modified so as to foster competition between non-attorneys and attorneys.

In January 2008, the FTC issued a report, required by the Postal Accountability and Enhancement Act that examined federal and state laws that apply differently to the U.S. Postal Service (USPS) and to its private competitors offering comparable products. The report concluded that legal constraints increase the USPS’s costs, and implicit subsidies partially mask those costs from consumers.

International Antitrust

The FTC continues to build cooperative relationships with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies. Notably, the FTC seeks to produce more effective, coordinated reviews of multijurisdictional mergers, and is working towards achieving consistent outcomes in cases of suspected unilateral anticompetitive conduct. We cooperated with counterpart agencies on cases of mutual interest, such as *Dow/Rohm & Haas* and *Hexion/Huntsman*. Participation in multilateral competition organizations provides valuable opportunities to promote international cooperation and convergence and for competition officials to share insights on law enforcement and policy initiatives. The FTC has strengthened the roles that it plays in the International Competition Network (ICN), the competition organs of the Organization for Economic Cooperation and

Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and the Asia-Pacific Economic Cooperation (APEC) fora. Working with its partners in the ICN, the FTC co-chairs the Unilateral Conduct Working Group, which seeks to increase convergence on approaches to issues of monopolization and dominance, and chairs the ICN's subgroup on the Merger Notification and Review Procedures and co-chairs its subgroup on technical assistance. We also are working with officials in China and India on issues related to the implementation of their new competition laws, and we participate in the U.S.-China Strategic Economic Dialogue.

In February 2008, the FTC and DOJ conducted a one-day workshop on Charting the Future Course of International Technical Assistance. The workshop included foreign and domestic experts, describing how their programs have worked and allowing participants to obtain the perspectives of other aid providers, academics, and private practitioners with a view toward improving the FTC's program and charting a course for its future.

Planned Activities in FY 2009 and Beyond

Over the next few years, the FTC will devote resources to significant law enforcement and policy initiatives designed to protect consumers and the competitive process.

CONSUMER PROTECTION

Through its consumer protection goal, the FTC focuses broad efforts to fight consumer fraud, deception, and unfair practices, and to protect consumer data and privacy.

Financial Services

Protecting consumers in the financial services marketplace will remain a critical part of the FTC's consumer protection goal. The FTC will combat unfair and deceptive practices involving, among other things, mortgage foreclosure scams, mortgage servicing, subprime lending in the mortgage and credit areas, credit cards, repayment cards, debt collection, and debt settlement. The FTC also will focus on fair lending and continue law enforcement efforts against discriminatory lending practices.

The 2009 Omnibus Appropriations Act directed the FTC to commence, within ninety days, a rulemaking proceeding to prohibit unfair and deceptive acts and practices with respect to mortgage loans. The FTC anticipates that its rulemaking will address mortgage servicing practices and scams involving mortgage loan modification and foreclosure rescue, as well as other mortgage lending issues.

Privacy and Data Security

The FTC will advance its efforts to protect consumers' private information by enforcing laws that require companies to maintain reasonable safeguards to protect sensitive consumer information; educating law enforcement officers on how to recognize, investigate, and prepare identity theft cases; and by educating consumers about how to protect their important data. In March 2009, the FTC, in conjunction with APEC and the OECD, hosted a two-day international conference on "Securing Personal Data in the Global Economy." The conference addressed how companies can manage personal data-security issues in a global information environment where data can be stored and accessed from multiple jurisdictions.

In April 2009, the FTC issued a proposed rule that would require consumers to be notified when the security of their health information is breached. The proposed rule arises from a mandate in the recently-enacted American Recovery and Reinvestment Act of 2009 designed to address new types of web-based entities that collect or handle consumers' sensitive health information.

The FTC will actively bring cases against those who abuse technology. Additionally, the FTC will take a lead role in addressing the complex privacy and security issues that may be associated with the use of behavioral advertising, contactless payment, mobile marketing, social networking, and other new media. In February 2009, FTC staff issued a report describing its ongoing examination of behavioral advertising and setting forth revisions to proposed principles to govern self-regulatory efforts in this area. In March 2009, the FTC and the Technology Law and Public Policy Clinic at the University of Washington School of Law hosted a conference on the use of digital rights management (DRM) technologies, a widespread practice that is expected to become increasingly prevalent in the U.S. marketplace in the coming years. Among other issues, the workshop addressed the need to improve disclosures to consumers about DRM limitations. In addition, in April 2009, the FTC staff issued a report based on a 2008 town hall meeting to explore consumer protection issues arising in the mobile commerce marketplace. The FTC will continue to monitor these issues and take law enforcement action as needed.

Though most entities covered by the Do Not Call (DNC) Rule comply, the FTC received more than 1.75 million consumer complaints alleging DNC violations in FY 2008. The FTC will continue to crack down on DNC violators, vigorously enforcing the DNC provisions of the Telemarketing Sales Rule.

The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. The FTC will continue to focus on health products, particularly products making disease prevention or weight loss claims. The FTC will focus its law enforcement on violations that create the greatest risks to consumer health.

Technology

Do Not Call

Health

Serving Hispanic and African American Populations

The FTC has conducted fraud surveys showing that Hispanic and African American consumers are more likely to be victims of fraud than non-Hispanic whites. The FTC will aggressively combat consumer fraud against Hispanics through its Hispanic Outreach and Enforcement Initiative, and research how best to serve African American consumers.

“Green” Marketing

The FTC will complete its series of workshops on “green” marketing and evaluate whether and, if so, how to modify the Green Guides. The FTC also will launch a consumer and business education campaign and take enforcement actions involving claims in this area.

Protecting Children

The FTC will continue to engage in policy and law enforcement work pertaining to marketing of food, alcohol, and violent entertainment to children. The FTC will monitor self-regulation in the food, alcohol, movie, video game, and music recording industries. In March 2009, the FTC hosted a workshop to gather input for its advertising literacy initiative, which will educate and empower tweens, or preadolescents, to be better informed consumers of information. In addition, the FTC will expedite the regulatory review of the Children’s Online Privacy Protection Rule to determine whether it should be modified to address changes in the mobile marketplace. This review, originally set for 2015, instead will begin in 2010 and provide an opportunity for extensive public comment.

Order Enforcement

Order enforcement will remain an integral part of the FTC’s consumer protection goal. The FTC will place a high priority on enforcing orders against repeat offenders, as well as those who act with them. As more information is entered into the FTC’s enforcement database, the FTC will continue to monitor the database, streamline data collection, and bring more enforcement actions.

Globalization and Cross-Border Enforcement

The FTC will continue its law enforcement against cross-border fraud and its policy development efforts in the international arena. Using the tools provided by the U.S. SAFE WEB Act, the FTC will continue to create and sustain international partnerships and networks to pursue matters involving foreign defendants, evidence, and assets. For example, the FTC intends to use the authority conferred by the U.S. SAFE WEB Act to work towards concluding formal international

agreements, under the State Department's oversight, with Canada and the European Union. As the FTC develops new initiatives relating to cross-border fraud, the agency will report on its activities in this area.

On the policy side, the FTC will continue to promote international development of market-oriented consumer protection policies that effectively address consumer harm. To that end, the FTC will continue to highlight the importance of enforcement as a key component of privacy protection (including data security, spam, and malware) in the OECD, the APEC, the London Action Plan (LAP), and other multilateral organizations. The FTC also will continue to participate actively in several OECD committees, in the International Consumer Protection Enforcement Network (ICPEN), and in APEC's Electronic Commerce Steering Group. Through cooperation with foreign consumer protection agencies and participation in international organizations, the FTC can engage in cooperative foreign law enforcement actions and develop policies that promote effective consumer choice in the international marketplace.

MAINTAINING COMPETITION

The work of the FTC's competition goal is critical to protect and strengthen the free and open markets that are the cornerstones of a vibrant economy. Robust competition promotes lower prices, higher quality products and services, and greater innovation, all of which benefit consumers. A vigorous marketplace provides the incentive and opportunity for the development of new ideas and innovative products and services. Open and competitive markets, however, require clear rules fairly applied. Events of recent years have shown that even the free market is susceptible to harm if market rules are not established and vigorously enforced. The FTC is dedicated to that task, and uses a variety of tools to maintain competition and protect consumers from anticompetitive mergers as well as anticompetitive business conduct such as illegal agreements among competitors, misuse of government processes to hamper rivals, and illegal attempts to monopolize or maintain a monopoly.

Promoting Competition in Health Care and Prescription Drugs

The rapidly rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Health-related products and services now account for a significant percentage of gross domestic product (GDP), and that share continues to grow each year. Preventing anticompetitive pharmaceutical mergers will continue to be an important priority for the FTC and a vital way to protect consumers from rising drug prices. The FTC will also continue to advance its enforcement program to attack collusive “pay-for-delay” settlements in the pharmaceutical industry, which, as described above, cost billions of dollars to consumers and governments. In addition, the FTC will continue to stop anticompetitive agreements among health care providers and to monitor hospital, medical device manufacturer, or other mergers that may raise the costs of health care.

The FTC held a series of workshops on healthcare issues in the past year and will continue to review these issues and prepare reports as warranted. These issues include: the competitive significance of health care quality information, competition that could be provided by developing an abbreviated regulatory approval pathway for follow-on generic biologic drugs, clinical integration in health care, and innovations and trends in health care delivery.

Preventing Anticompetitive Activity in Energy Industries

The price of gasoline continues to be a concern for consumers, and is a commensurately high priority for the FTC. The FTC continues to focus closely on gasoline markets and will move quickly to address any anticompetitive activity, whether merger or nonmerger activity. Exercising the authority provided by Congress under the Energy Independence and Security Act of 2007 (EISA), the FTC is conducting a rulemaking process that will assist the Commission in determining whether, and in what ways, it should develop a rule defining and prohibiting market manipulation in the petroleum industry. The Commission expects to conclude this proceeding in FY 2009.

The FTC is working on a report based on the energy markets workshop previously held. The report will focus on topics such as the relationship between market forces and government policy in energy markets, the dependence of the U.S. transportation sector on petroleum, the effects of electric power industry restructuring on competition and consumers, what energy producers and consumers may expect in

the way of technological developments in the industry, the security of U.S. energy supplies, and the government's role in maintaining competition and protecting energy consumers. Furthermore, the FTC will update its most recent report on the ethanol industry, issued in FY 2008, which examines the state of ethanol production in the United States and measures market concentration using capacity and production data.

Furthermore, under its Gasoline and Diesel Price Monitoring Project, the FTC continues to track retail gasoline and diesel fuel prices in 360 cities nationwide and wholesale prices in 20 major urban centers to identify unusual changes in gasoline prices; if we detect any such changes, FTC staff will promptly investigate the cause. Finally, the FTC will continue to update and enhance its Oil and Gas Industry Initiatives Web site, which provides consumers with important information on the FTC's oversight of the petroleum industry.

Identifying anticompetitive mergers remains one of the top priorities of the Maintaining Competition goal. The pre-merger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Additionally, since 2001, when amendments to the HSR Act increased the threshold for which mergers must be reported under the Act, the FTC has devoted more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Despite a significant decline in HSR filings in the past few months due to the downturn in the economy, the FTC's merger enforcement program remains very active. In FY 2009, the Commission has already filed four merger challenges to both proposed and consummated mergers (well above the five year average of 1.6 cases per year), and the staff continues to litigate administratively a merger challenge filed in FY 2008. Antitrust merger litigation is highly resource-intensive because the issues litigated are increasingly complex and involve sophisticated economic theories. Necessarily, over time the size of litigation teams as well as expenses incurred has grown. Litigating the agency's current filed merger cases and any new actions to their ultimate conclusion will require significant resources in 2009 and the years

Aggressively Challenging Anticompetitive Mergers

ahead. Moreover, the FTC is constantly refining its analytical approach to mergers in light of current marketplace realities. In that context, the Commission is considering whether to revise the Merger Guidelines.

Increasing Emphasis on High Technology

The growing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations more and more often involve high-technology sectors of the economy, such as computer hardware and software and pharmaceutical products. Furthermore, issues in antitrust matters increasingly intersect with intellectual property (IP) concerns, raising difficult questions about how these two bodies of law can best work together to further their common goal of promoting innovation. As these trends continue, the FTC requires more and more specialized technical knowledge and expertise. In FY 2009 and beyond, the FTC will enhance its ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing both its in-house knowledge and use of independent experts and consultants.

In FY 2009, the FTC is holding a series of public hearings to explore the evolving market for IP. The hearings will examine changes in IP law, patent-related business models, and new learning about the operation of the IP marketplace since the issuance in October 2003 of the FTC report "To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy."

In addition, the Commission held a public workshop in October 2008 to explore the scope of the prohibition of unfair methods of competition in Section 5 of the FTC Act in light of legal precedent, economics, and learning and changing business practices in a global and high-tech economy. Commission staff are in the process of drafting a report on the scope of Section 5. The Commission also initiated a series of public workshops to explore, for purposes of enforcing Section 1 of the Sherman Act and Section 5 of the FTC Act, how to distinguish between uses of resale price maintenance that benefit consumers and those that don't.

The FTC will continue a study on authorized generics. An authorized generic is chemically identical to a particular brand-name drug, but the brand-name manufacturer authorizes it to be marketed as a generic version. The study is intended to help the agency understand the circumstances under which innovator companies launch authorized generics, collect and analyze data on how competition between generics and authorized generics during the 180-day exclusivity period has affected short-run price competition and long-run prospects for generic entry, and build on the economic literature about the effect of generic drug entry on prescription drug prices.

Studying Authorized Generics

The FTC will continue its efforts to educate consumers and businesses on the important role of competition in providing them the most valuable mix of price, choice, and innovation. In addition to having developed specialized Web pages like those for health care, oil and gas, and real estate, the FTC will look for opportunities to improve content on its website and create new content in response to frequently asked questions and issues of importance to consumers and business. The FTC also reaches out to businesses subject to antitrust laws. The FTC's Premerger Notification Office responds to thousands of calls each year about premerger filing requirements. The FTC and its staff also provide advisory opinions to businesses on proposed conduct. These letters provide a detailed antitrust analysis of the particular conduct that the requester may wish to pursue. In FY 2009, the agency is focused on ensuring that our stakeholders are informed and educated on the HSR program. Planned activities include a workshop on the basics of HSR premerger notification and a redesign of the relevant web pages.

Increasing Consumer and Business Outreach

The FTC will continue to work with competition agencies worldwide to promote best practices and to minimize policy divergences to ease burdens on firms that operate on a global basis, consistent with the needs of competition enforcers to collect sufficient information to conduct their investigations. The FTC plays a lead role in pursuing convergence toward best practices through participation in international bodies, such as the OECD and the ICN. The FTC is substantially strengthening its international competition outreach efforts in order to build cooperative relationships with our counterpart agencies through a new International

Promoting Global Competition

Ongoing Administrative Litigation

Fellows program, which allows foreign antitrust agency staff to spend time at the FTC, a new international exchange program, in which the FTC has sent its own staff to work in foreign agencies in the United Kingdom and European Union, and through enhancements to our existing technical assistance program.

Administrative and federal litigation provides an opportunity for the FTC to apply its institutional expertise to the development of antitrust jurisprudence. Currently, the FTC has a number of competition matters in various stages of administrative and federal litigation. The FTC expects this litigation workload to continue at high levels, particularly in the merger area. Antitrust litigation, whether in an administrative proceeding or in federal court, is highly complex and requires significant agency resources. The costs of expert witnesses, travel, and stenographic reporting are increasing exponentially, particularly in the hiring of expert witnesses which is key to successfully litigating these matters. The Commission's recent amendments to its administrative litigation rules require that cases proceed at a fast pace. These amendments help the FTC serve consumers more effectively and require the Commission to devote an intense amount of resources during the faster-paced proceeding. The Commission has established an internal standing committee on the Part 3 rules to continue to examine the rules and make bi-annual recommendations for changes to the rules.

Advocating for Competition Before the Courts and Other Government Agencies

The FTC works to eliminate government-imposed impediments to a competitive marketplace by advising other government policy-makers to apply sound competition principles as they make decisions affecting consumer welfare. Among its activities, the FTC will continue to file comments on proposed government action (legislation, regulation, and other rules) affecting competition across many industries, including the provision of legal services, real estate brokerage, the direct shipment of wine to consumers, and contractual relationships between product suppliers and distributors. The FTC staff also will continue to examine issues addressed in the FTC's reports on competition policy in the real estate industry and broadband connectivity. In addition to these activities, FTC staff will continue to provide

guidance on important competition policy issues, through issuing reports and filing amicus briefs to help courts resolve important competition issues.

The FTC must maintain an effective compliance program so that consumers receive the benefits of competition obtained through FTC orders. The FTC focuses on devising and drafting effective orders for each individual matter; this is a highly fact-specific process. In addition, the agency conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, such as divestiture orders. The FTC also must litigate, when necessary, to vindicate its authority to order relief to protect competition.

Enforcing FTC Orders

Needed Resources FY 2010

The FTC's FY 2010 budget request for \$287,200,000 supports 1,149 FTE. This is an increase of \$28,000,000 and 33 FTE over the FTC's FY 2009 enacted level and consists of:

Mandatory Salary and Contract Expenses [\$8,255,000]:

- The annualized three-month cost of the January 2009 pay increase and the nine-month cost of a January 2010 pay raise [\$6,836,000]
- Contract and other non-pay inflation [\$1,419,000]

Space Requirements [\$15,000,000]

In 2012, the lease of the FTC's building at 601 New Jersey Avenue will expire and the agency will need to acquire new space. The General Services Administration (GSA), as the government's leasing agent, cannot begin the acquisition process without funding in place for FY 2010. The FTC is working with GSA on the planned acquisition of this office space to be ready in FY 2012. We envision this long-term leased space will be sufficient to house the staff currently located at 601 New Jersey Avenue and the anticipated

increased staff between now and 2012. Without this funding, the FTC risks omission from lease negotiations or consideration for any other property prior to lease expiration in 2012.

33 Needed FTE [\$4,745,000]

Includes 22 FTE for Consumer Protection:

- 9 FTE to target deceptive and illegal practices and to tackle the growing law enforcement challenges in the financial markets, with a focus on mortgage and subprime lending markets. One major new task for the FTC in FY 2010 will be enforcing new Federal Reserve Board rules governing the mortgage market, with respect to all non-bank mortgage lenders, advertisers, and servicers covered by the rule. In addition, as consumer debt continues to rise, more consumers will be targeted by debt collection, credit repair, debt settlement, and foreclosure rescue companies. The agency will require additional resources to protect consumers from potentially deceptive, unfair, and otherwise illegal practices by these companies.
- 8 FTE to implement the FTC's new roles and responsibilities in the American Recovery and Reinvestment Act of 2009. The Act would expand the agency's privacy and identity protection function by requiring companies to report any breach of personal health record information to the FTC, as well as all U.S. citizens or residents affected. This section also requires the FTC to establish standards for the notification of citizens when their personal health information is at risk.
- 3 FTE in the Office of the Executive Director to support agency-wide financial management, information technology, facilities planning, equal employment opportunities, and records management. These FTE are essential to support the program staff at an appropriate level.

- 1 FTE to follow and provide input on legislation addressing the FTC, with an emphasis on legislation directly affecting consumers.
- 1 FTE for General Counsel for litigation and legal counsel to cover the rapidly increasing workload on privacy and information-security issues.

Includes 11 FTE for Maintaining Competition:

- 8 FTE to challenge and prevent anticompetitive mergers and other anticompetitive business practices, with an emphasis on the energy, pharmaceutical, healthcare, and technology markets. The FTC must be equipped with experienced staff to respond to the increased activity in these sectors, as well as the possibility of litigation in response to the EISA.
- 2 FTE in the Office of the Executive Director to support agency-wide financial management, information technology, facilities planning, equal employment opportunities, and records management. These FTE are essential to support the program staff at an appropriate level.
- 1 FTE for General Counsel to research, write, and compile high-visibility reports, particularly those in response to Congressional Requests.

Appropriations Language Provisions

Federal Deposit Insurance Corporation Improvement Act: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) amended the Federal Deposit Insurance Act. As originally enacted, the FDICIA imposed various statutory responsibilities on the FTC that the agency did not have the resources or expertise to perform effectively. Accordingly, since 1992, Congress, with Administration support, has prohibited the FTC from spending funds on some or all of the responsibilities assigned to it under section 151 of the Act.

The requested appropriations language for FY 2010 continues the revised spending restriction, reflecting legislation enacted in October 2006, which maintains an appropriately narrow role for the FTC under section 151. This role enables the FTC to continue to enforce the provisions requiring non-federally-insured depository institutions to disclose that they do not have federal insurance and that the federal government does not guarantee the depositor will get back his or her money, and retains the implementation ban with respect to “look-alike” provisions.

Other Provisions: The requested appropriations language continues in effect provisions in prior-year appropriation acts that (1) allow for the purchase of uniforms and hire of motor vehicles; (2) allow services as authorized by 5 U.S.C. 3109; (3) limit to \$300,000 the amount available for contracts for collection services in accordance with 31 U.S.C. 3718; (4) allow up to \$2,000 for official reception and representation expenses; (5) allow for the collection of offsetting fees; (6) allow for the gross sum appropriated to be reduced as offsetting fees are collected; and (7) allow all funding to be available until expended.

Offsetting Fee Collections

This submission assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC \$129,000,000 in FY 2010. The FTC assumes the \$158,200,000 difference between offsetting collections and the \$287,200,000 request will be funded through a direct appropriation.

HSR Premerger Filing Fees. This submission assumes offsetting HSR fee collections will provide the FTC \$110,000,000 in FY 2010. These fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553).

Do Not Call Fees. This submission assumes offsetting collections of \$19,000,000 from Do Not Call fees. These fees, first collected in FY 2003, will be used to maintain and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers and to carry out other Telemarketing Sales Rule activities.

Government Performance And Results Act (GPRA)

The FY 2010 budget request is based on the FTC's GPRA Strategic Plan for FYs 2006 to 2011 and supported by the FY 2009 and FY 2010 Performance Plans included in this submission. The FTC updated and revised its Strategic Plan in FY 2006 and will continue to work closely with Congress, the Office of Management and Budget, and its stakeholders to ensure that its strategic goals, objectives, and measures continue to provide relevant information.

Budget Request Summary
(\$ in thousands)

	Fiscal Year 2009		Fiscal Year 2010		Change	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
Budget by Goal:						
Consumer Protection	601	\$148,303	623	\$165,144	22	\$16,841
Maintaining Competition	515	110,897	526	122,056	11	11,159
Total	1,116	\$259,200	1,149	\$287,200	33	\$28,000

Budget by Funding Source:

Offsetting Collections				
HSR Filing Fees	\$170,500		\$110,000	-\$60,500
Do Not Call Fees	21,000		19,000	-2,000
Subtotal Offsetting Collections	\$191,500		\$129,000	-\$62,500
General Fund	67,700		158,200	90,500
Total	\$259,200		\$287,200	\$28,000

Summary of Changes
(\$ in thousands)

	FY 2009	FY 2010	Change
Budget Authority	\$259,200	\$287,200	\$28,000
Full-time Equivalents	1,116	1,149	33

Explanation of Change:

	FTE	Dollars
A. Mandatory Salary and Contract Expenses		
Annualized three-month cost of January 2009 pay increase, and nine-month cost of the January 2010 pay increase	---	+\$6,836
Contract and other non-pay inflation	---	+\$1,419
Subtotal	---	+\$8,255
B. Space Requirements		
Cost to initiate the leasing process to replace 601 New Jersey building due to lease expiration in FY 2012	---	+\$15,000
Subtotal	---	+\$15,000
C. FTE Increases		
Consumer Protection	+22	+\$3,163
Maintaining Competition	+11	+\$1,582
Subtotal	+33	+\$4,745
Total Change	+33	+\$28,000

Budgeted Resources by Objective
(\$ in thousands)

Consumer Protection

Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace	FY 2009 FTE	FY 2009 Amount	FY 2010 FTE	FY 2010 Amount
Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury	96	\$24,827	95	\$26,038
Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement	419	\$102,042	436	\$114,191
Objective 1.3: Prevent consumer injury through education	49	\$12,351	51	\$13,779
Objective 1.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	37	\$9,083	41	\$11,136
Total	601	\$148,303	623	\$165,144

Budgeted Resources by Objective
(\$ in thousands)

Maintaining Competition

Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace	FY 2009 FTE	FY 2009 Amount	FY 2010 FTE	FY 2010 Amount
Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury	57	\$12,255	56	\$13,029
Objective 2.2: Stop anticompetitive mergers and practices through law enforcement	413	\$88,957	428	\$99,337
Objective 2.3: Prevent consumer injury through education	26	\$5,610	23	\$5,298
Objective 2.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	19	\$4,075	19	\$4,392
Total	515	\$110,897	526	\$122,056

Annual Performance Measures

Fiscal Years 2009 to 2010

	FY 2009 Target	FY 2010 Target
Protect Consumers		
Goal 1: To prevent fraud, deception, and unfair practices in the marketplace.		
Objective 1.1-Identify fraud, deception, unfairness, and other unlawful practices that cause the greatest consumer injury:		
Measure 1.1.1: Collect and enter complaints and inquiries entered into the consumer database.	1.75 million	1.75 million
Measure 1.1.2: The percentage of the agency's consumer protection law enforcement actions that are responsive to complaint information gathered by the agency.	65%	65%
Objective 1.2-Stop fraud, deception, unfairness, and other unlawful practices through law enforcement:		
Measure 1.2.1: Stop economic injury to consumers through law enforcement.	\$400 million	\$400 million
Objective 1.3-Prevent consumer injury through education:		
Measure 1.3.1: Track consumer protection messages accessed online or in print.	55 million	55 million
Measure 1.3.2: Track consumer protection messages related to identity theft, accessed online or in print.	10 million	10 million
Measure 1.3.3: Track consumer protection messages in Spanish, accessed online or in print.	3.0 million	3.8 million
Measure 1.3.4: Track (a) the number of times print media publish articles that refer to FTC consumer protection activities and (b) the circulation of media that publish those articles.	(a) 2,750 articles (b) 750 million circulation	(a) 3,000 articles (b) 750 million circulation
Objective 1.4-Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:		
Measure 1.4.1: Convene or participate substantially in workshops and conferences on novel or challenging consumer protection problems or issues.	6	6
Measure 1.4.2: Issue reports on novel or challenging consumer protection problems or issues.	8	8
Measure 1.4.3: File public and advocacy comments with other federal and state government agencies.	6	6
Measure 1.4.4: Cooperate with foreign government agencies on enforcement matters with cross-border components.	20	20
Measure 1.4.5: Provide consumer protection related policy or technical input to foreign government agencies or international organizations.	20	20

	FY 2009 Target	FY 2010 Target
Maintain Competition		
Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.		
Objective 2.1-Identify anticompetitive mergers and practices that cause the greatest consumer injury:		
Measure 2.1.1: Achieve positive outcomes in matters in which HSR requests for additional information are issued.	90%	90%
Measure 2.1.2: Percentage of significant nonmerger investigations that result in a positive outcome.	90%	90%
Measure 2.1.3: Track the number of enforcement actions for the total mission, for the (a) merger and (b) nonmerger actions.	track results	track results
Measure 2.1.4 Track the number of (a) second requests, (b) reportable transactions for which premerger notifications were received, (c) HSR investigations that resulted in enforcement action, (d) transactions in which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and (e) investigations closed because the evidence indicated that a competitive problem was unlikely.	track results	track results
Measure 2.1.5: Track the number of significant nonmerger investigations closed each year, (a) with enforcement action and (b) without enforcement action.	track results	track results
Objective 2.2-Stop anticompetitive mergers and practices through law enforcement:		
Measure 2.2.1: Positive result of cases brought by FTC due to alleged violations.	80%	80%
Measure 2.2.2: Achieve savings for consumers through merger enforcement.	\$500 million	\$500 million
Measure 2.2.3: Take action against mergers likely to harm competition in markets with a total of at least \$125 billion in sales over a five-year period; \$25 billion in sales each year.	\$25 billion	\$25 billion
Measure 2.2.4: Achieve savings for consumers through nonmerger enforcement.	\$80 million	\$80 million
Measure 2.2.5: Take action against anticompetitive conduct in markets with a total of at least \$40 billion in annual sales over five-year period; \$8 billion each year.	\$8 billion	\$8 billion
Measure 2.2.6 Save consumers at least six times the amount of agency resources allocated to merger activity.	600%	600%
Measure 2.2.7: Save consumers at least four times the amount of agency resources allocated to nonmerger enforcement activity.	400%	400%
Objective 2.3-Prevent consumer injury through education:		
Measure 2.3.1: Quantify number of hits on antitrust information on FTC Web site.	15 million	15 million
Measure 2.3.2: Track (a) the number of times print media publish articles that refer to FTC competition activities and (b) the circulation of the media that publish those articles.	(a) 2,700 articles (b) track results	(a) 2,700 articles (b) track results
Objective 2.4-Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:		
Measure 2.4.1: Convene or participate substantially in workshops, conferences, seminars, and hearings involving significant competition-related issues.	4	4
Measure 2.4.2: Issue studies, reports, and working or issues papers on significant competition-related issues.	8	8
Measure 2.4.3: Make advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.	6	6
Measure 2.4.4: Issue advisory opinions to persons seeking agency review of proposed business actions.	2 to 3	2 to 3
Measure 2.4.5: File <i>amicus briefs</i> with courts addressing competition-related issues.	2 to 3	2 to 3
Measure 2.4.6: Track the volume of traffic on ftc.gov relating to competition research, reports, advocacy, and international cooperation and exchange.	700,000	700,000
Measure 2.4.7: Track the number of (a) cases on which the FTC cooperated with a foreign competition authority, (b) consultations with or comments to foreign competition authorities, (c) written submissions on international fora, (d) international events attended, and (e) leadership positions held by FTC staff in international competition organizations.	a) 30 b) 25 c) 7 d) 8 e) 5	a) 30 b) 25 c) 7 d) 8 e) 5

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses, [\$259,200,000] \$287,200,000, to remain available until expended: *Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed [\$170,500,000] \$110,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That, notwithstanding any other provision of law, not to exceed [\$21,000,000] \$19,000,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2009] 2010, so as to result in a final fiscal year [2009] 2010 appropriation from the general fund estimated at not more than [\$67,700,000] \$158,200,000: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to implement subsection (e)(2)(B) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).